Filed 2/10/14 P. v. Reneau CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JOSHUA RENEAU, Defendant and Appellant.	B243875 (Los Angeles County Super. Ct. No. BA393250)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bob S. Bowers, Jr., Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, State Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Joshua Reneau ("Reneau") appeals from the judgment on his conviction of carrying a loaded firearm and assault with a semiautomatic firearm in violation of Penal Code section 245. On appeal, Reneau contends the trial court erred when it did not instruct the jury on CALJIC No. 2.01 *sua sponte* pertaining to circumstantial evidence, he received ineffective assistance of counsel, and the trial court erred by not granting a new trial.[1] As we shall explain, the evidence in this case did not warrant a jury instruction on circumstantial evidence, defense counsel was not ineffective and the trial court did not abuse its discretion in declining to grant a new trial. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Nery Alvarado is a self-admitted member of the Easy Riders criminal street gang. On March 15, 2011 Nery Alvarado drove to a 76 Gas Station near the corner of Crenshaw Boulevard and Adams Street with his mother, and his girlfriend, with the intention of filling his mother's car with gasoline.[2] Alvarado left his mother and girlfriend in the car and walked towards the gas station store to pay for the gasoline.

En route to the store Alvarado walked by a bus stop where a group of African-American men and women were gathered. One of the African-American males, who Alvarado later identified as the appellant Reneau, asked Alvarado if he was from the gang "18." Alvarado answered that he was from Easy Riders. Reneau identified himself as a member of the West Boulevard Crips gang and began to "diss"[3] Alvarado's gang.

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1 Reneau's opening brief also challenged the order imposing a sentence based on the gang enhancement. However, in a letter to this court, Reneau subsequently withdrew his challenge to the sentence.

2 Alvarado's description of the events at the gas station on March 15, 2011, is taken from his original police interview on April 11, 2011. His interview with police was recorded and played for the jury during the trial. The jury was also provided with a transcript of the recorded interview. Both the transcript and the video were redacted in part.

3 To "diss" is to make derogatory statements that disrespect another person or gang.

Alvarado stated that he tried to ignore the comments and continued to walk into the gas station store. From inside the store, Alvarado saw Reneau take off his sweater, pull out a gun from his waistband, wrap the gun in the sweater, and hand the bundle to a masculine-looking female in the group. Alvardo told police that Reneau wore a white shirt under the sweater and khaki colored shorts.

Alvarado began to walk back to his mother's car after paying for the gas. Reneau followed him and challenged him to a fight. Alvarado asked Reneau to leave him alone because he was "with [his] mom."

Los Angeles Police Department ("LAPD") Officers Juan Flores and Paul Fedynich were on patrol in the area and observed the confrontation between Alvarado and the group of African-Americans. Officer Flores believed he saw Reneau, who wore a white shirt and tan shorts, being the aggressor in the confrontation.

According to Alvarado he restrained himself. He told his girlfriend, who had started pumping the gas, to "hurry up." Alvarado then saw Reneau run to the masculine-looking female and retrieve the gun he had handed to her earlier. Alvarado stated that he saw the gun. He got inside his mother's car, instructing his mother to "go, mom, go. . . ." Alvarado saw a flash from the gun's muzzle. He believed Reneau aimed directly at him and fired the gun. Officer Flores heard the gunshot. Officer Flores also saw what he initially believed was a Black male, but later learned was a masculine-looking female, wearing dark clothing and pointing a gun at Alvarado and his girlfriend. Officer Flores and Officer Fedynich exited their vehicle and shot at the armed person. Officer Flores then saw the masculine-looking female run across Crenshaw Boulevard and drop the gun before he lost sight of her.[4]

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[4] The masculine-looking female was later identified in the surveillance video as Neoshia Reneau, Joshua Reneau's sister. After the incident, Neoshia Reneau went to the hospital in Inglewood and was treated for a gunshot wound in her leg. Neoshia Reneau and Joshua Reneau were tried together as co-defendants. Neoshia Reneau was charged with one count of assault with a semiautomatic firearm and was acquitted of the charge.

Alvarado and his family drove to the exit of the gas station. Alvarado saw Reneau run across the street towards a different gas station, and drop the gun as police officers returned fire.

Marisol Negrete was at the gas station when the shooting occurred. She saw a group of four or five African-American men and women arguing with someone inside the gas station. She saw that one of the African-American men wore a white shirt and another wore a dark colored shirt. She saw an African-American male in a white t-shirt lift his shirt and draw out a gun from his waistband. He pointed the gun at the people he was arguing with and fired the weapon. Negrete hid below her car and did not see who dropped the gun.

Mario Alonzo Calzadilla was also at the station at the time of the shooting. Calzadilla saw an African-American male in a dark colored hooded sweatshirt, hat, and shorts, armed with a gun. At trial, Calzadilla recanted and stated that he did not actually see the gun.

Officer Ryan Rycroft was on patrol with his partner when they received a call regarding shots fired at 8:30 p.m. They stopped their patrol car at the end of an alley near Crenshaw Boulevard and Adams Street. They saw Reneau walking in the area. Reneau wore a black t-shirt, khaki shorts and brown shoes. Because of the way Reneau was looking around and perspiring, the two officers exited their vehicle and walked towards him. Officer Rycroft asked Reneau where he was coming from, and Reneau replied that he had heard gun shots, got down and ran. The officers were uncertain if Reneau was a suspect so they placed him in handcuffs and asked him additional questions. During that encounter, Officer Rycroft noticed a "BK" tattooed on Reneau's left hand. The officer believed the tattoo meant "Blood Killer" which signifies a connection to the Crips' gang.

That same evening, Officer Flores appeared at a field show up and identified Reneau as one of the men engaged in the argument at the gas station.

Later in the investigation, Forensic Fingerprint Specialist Mercy Reed was asked to examine a latent print lifted off the magazine of the recovered gun. Reed found one identifiable print and it matched Reneau's.

Police were not able to locate Alvarado until April 7, 2011. Alvarado provided details of the incident. He reviewed a six-pack photographic lineup and he "immediately pointed to number four" because he recognized Reneau's face in the photo. Alvarado told detectives that he was absolutely certain he identified the right person.

Reneau was arrested and charged with one count of carrying a loaded firearm with a prior conviction in violation of former Penal Code section 12031, subdivisions (a)(1) and (a)(2)(A)[5] and one count of assault with a semiautomatic firearm in violation of Penal Code section 245, subdivision (b). The information further alleged that both offenses were committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22, subdivision (b)(1), and that Reneau personally used a firearm in violation of Penal Code section 1203.06, subdivision (a)(1), and Penal Code section 12022.5, subdivision (a). The information also alleged that Reneau had one prior conviction and had served a prison term. Reneau pled not guilty and the matter proceeded to trial.

At trial, Alvarado stated that he could not recall anything from that night. He testified that he did not recall being at the gas station the night of the incident, did not recall his preliminary hearing testimony, did not recall anything he told detectives,[6] could not identify himself in the surveillance video and asserted that he had just circled something for the photo lineup.

At trial, Reneau presented several expert witnesses. One testified about the short comings of human memory, cross-racial identification, and factors that decrease accuracy of identification in high stress situations. Another expert testified about issues with the fingerprint identification. A weapons and ballistics expert testified that the gun recovered by police had never been fired and it appeared to him in reviewing the video,

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[5] In 2012 Penal Code section 12031 was renumbered Penal Code section 25850.

[6] At trial Alvarado testified that he was intoxicated by hard liquor when he was arrested by police, and that he was drunk and under the influence of marijuana during his police interview.

Reneau had backed up with his hands in the air and then turned away. The jury convicted Reneau of carrying a loaded firearm and assault with a semiautomatic firearm, and found the gang enhancement allegation true. The court sentenced Reneau to a total sentence of 11 years and eight months in prison.

This appeal followed.

DISCUSSION

On appeal, Reneau asserts that the trial court committed several reversible errors. He claims that: (1) the court erred in failing to instruct the jury with CALJIC No. 2.01 *sua sponte* because the prosecutor used circumstantial evidence to convict him; (2) his counsel was ineffective for failing to suppress evidence of the six-pack photographic identification; and (3) the trial court erred when it failed to grant a new trial after limiting Reneau's closing argument and failing to allow him to present evidence of a police weblog posting. We address these claims in turn.

I. The Court Did Not Err in Failing To Instruct With CALJIC No. 2.01.

Reneau contends that the trial court erred in failing to instruct the jury *sua sponte* with CALJIC No. 2.01 regarding circumstantial evidence.[7] He argues that the court was

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[7] CALJIC No. 2.01 provides: "Sufficiency Of Circumstantial Evidence-Generally [¶] However, a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion. [¶] Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt. [¶] Also, if the circumstantial evidence [as to any particular count] permits two reasonable interpretations, one of which points to the defendant's guilt and the other to [his][her] innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation that points to [his] [her] guilt. [¶] If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable."

required to instruct with CALJIC No. 2.01 because the prosecution relied on circumstantial evidence to prove that he carried and fired a loaded firearm.

For the jury to find that Reneau committed an assault with a semiautomatic firearm under Penal Code section 245, subdivision (b), the prosecution needed to prove beyond a reasonable doubt that Reneau willfully performed an act with a semiautomatic firearm with the present ability to apply force with that firearm. To convict Reneau of carrying a loaded firearm with a prior conviction under the former Penal Code section 12031, subdivisions (a)(1), (a)(2)(A) (now Penal Code section 25850, subdivisions (a) and (c)), the prosecution needed to prove beyond a reasonable doubt that (1) Reneau carried a loaded firearm on his person while in a public place, (2) Reneau had knowledge of the presence of the firearm; and (3) Reneau previously had been convicted of a felony. (See Pen. Code, § 25850; CALJIC No. 12.54.)

Reneau argues that the prosecution relied heavily on circumstantial evidence to prove that Reneau had the gun in his possession and that he willfully used the weapon. Reneau further asserts that the evidence against him was equivocal at best. As explained below, the trial court did not err in failing to give CALJIC No. 2.01. CALJIC No. 2.01 was not required because the prosecution used circumstantial evidence only to corroborate the direct evidence that Reneau committed the crimes.

"In a criminal case, a trial court must instruct on general principles of law relevant to the issues raised by the evidence, even absent a request for such instruction from the parties." (*People v. Cruz* (2008) 44 Cal.4th 636, 663.) A court must instruct with CALJIC No. 2.01 when the prosecution's case rests substantially or entirely on circumstantial evidence. (*People v. Livingston* (2012) 53 Cal.4th 1145; *People v. Yrigoyen* (1955) 45 Cal.2d 46; *People v. Bender* (1945) 27 Cal.2d 164.) However, the instruction need not be given when circumstantial evidence is merely incidental to and corroborative of direct evidence. (*People v. McKinnon* (2011) 52 Cal.4th 610, 676; *People v. Wiley* (1976) 18 Cal.3d 162.) Additionally, "'[t]he instruction should not be given 'when the problem of inferring guilt from a pattern of incriminating circumstances

is not present.'" (*Id.* at p. 174, citing *People v. Gould* (1960) 54 Cal.2d 621, 628-629 overruled on other grounds by *People v. Cuevas* (1995) 12 Cal.4th 252.)

The use of circumstancial evidence here did not require a *sua sponte* instruction with CALJIC No. 2.01 because the circumstantial evidence was used to support the direct evidence. The prosecution relied on direct evidence from eyewitness testimony and identification, including eyewitness evidence from the victim, Alvarado. Although Alvarado was an unwilling witness in the investigation and trial proceedings, he provided direct evidence that Reneau committed the crimes. Alvarado identified Reneau out of a photo array and told investigators that he saw Reneau take a gun off his waistband, wrap it in a sweatshirt and hand it to a masculine-looking female. He stated that under the sweater, Reneau wore a white shirt. Alvarado also related during the interview that he saw Reneau retrieve the gun from the female and saw Reneau "[pull] the gun out and it went off, pow."[8]

This direct evidence was corroborated by circumstantial evidence of Reneau's guilt, including the fingerprint on the recovered gun magazine, and the testimony of the officers who identified Reneau as participating in the altercation prior to the shooting. In addition, the jury heard testimony from eyewitness Marisol Negrete, who stated she saw a man wearing a white shirt lift his shirt and pull out a gun from his waistband. She saw him point the gun at the people he was arguing with and fire it. Ms. Negrete's testimony corroborated Alvarado's versions of the crime. In addition, the jury also saw two surveillance videos taken from the gas station that showed the incident. The videos showed Alvarado get out of his car, and several people approach him. The videos show the group repeatedly coming up to Alavardo and finally shows the group running away when the police arrived and returned fire.

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[8] The fact that at trial Alvarado told the jury that he could not remember the incident, or his statement to the police or his identification of Reneau pertains to the weight and credibility to be given by the jury to his statement to the police. It does not change the status of the evidence as direct evidence of the crimes.

The prosecution's reliance on circumstantial evidence is consistent with decisions in which courts have found the giving of CALJIC No. 2.01 was unnecessary. For example, in *People v. Williams* (1984)162 Cal.App.3d 869, the court held the giving of CALJIC No. 2.01 was unnecessary where the prosecution relied on circumstantial evidence to corroborate direct evidence of an accomplice's testimony. In *Williams*, two men robbed another man of a duffle bag full of VHS tapes. The prosecution's only direct evidence was the accomplice's testimony pertaining to the defendant's involvement. Additionally, the prosecution relied on circumstantial evidence given by two other witnesses, one who observed the two men running away from the crime, and the other who heard the zipper noise of the duffle bag being opened.

Alvarado's testimony in the instant case is comparable to the accomplice testimony in *William*s. Alvarado saw Reneau multiple times over a number of minutes in a well-lit gas station. This direct evidence implicates Reneau, and the circumstantial evidence confirms that others saw a man fitting Reneau's description taking part in the argument and holding and firing a gun. As noted in *Williams*, "the fact that circumstantial evidence is used in cases requiring corroborative evidence does not mean that the prosecution 'substantially relies' on the circumstantial evidence as that phrase is used in cases involving CALJIC No. 2.01." (*People v. Williams, supra*, 162 Cal.App.3d at p. 875.)

The situation in *Williams* and in this case contrasts with that in *People v. Rogers* (2006) 39 Cal.4th 826, 885, in which the Supreme Court concluded that the trial court erred by not instructing on CALJIC No. 2.01. In *Rogers* the prosecution's case regarding the identity of a woman's killer rested "principally on two items of circumstantial evidence." The evidence included the defendant's possession of the murder weapon and his admission that he killed another woman. There was no direct evidence to link the defendant to the woman's murder. Here, however, the prosecution's case rested on more than circumstantial evidence. The prosecution presented an eyewitness – the victim – who identified Reneau as the perpetrator. Unlike *Rogers*, the circumstantial evidence here was used to corroborate what the victim observed.

Even if the court had erred by not giving the CALJIC No. 2.01 instruction, the error is harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836. The direct evidence was sufficiently strong to support the conviction, notwithstanding the circumstantial evidence. Here, Alvarado, the main witness and victim, who spent the most time interacting with Reneau, gave detailed information about the incident and identified Reneau as the aggressor. Accordingly, it is not reasonably probable that absent the error Reneau would have obtained a better result at trial.

II. Reneau's Counsel Was Not Ineffective in Failing to File a Motion to Suppress the Six-pack Photograph Identification Evidence.

A conviction will not be reversed based on a claim of ineffective assistance of counsel unless the defendant establishes both of the following: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, a determination more favorable to defendant would have resulted. (*People v. Huggins* (2006) 38 Cal.4th 175, 205-206; *Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694.)

"Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.' [Citation]. '[W]e accord great deference to counsel's tactical decisions' [citation], and we have explained that 'courts should not second guess reasonable, if difficult, tactical decisions in the harsh light of hindsight.' [Citation.] 'Tactical errors are generally not deemed reversible, and counsel's decision making must be evaluated in the context of available facts.'" (*People v. Weaver* (2001) 26 Cal.4th 876, 925-926.) "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude

counsel must have in making tactical decisions." (*Strickland v. Washington, supra,* 466 U.S. at pp. 688-689.)

Reneau complains the six-pack photographic lineup was impermissibly suggestive because some witnesses had described a man in a white shirt as having the gun, and Reneau was the only person in the photo array wearing a white shirt. Consequently, Reneau argues his counsel was ineffective when he failed to file a motion to suppress the photo array on the basis that it was unduly suggestive.

'"Competent counsel is not required to make all conceivable motions or to leave an exhaustive paper trail for the sake of the record. Rather, competent counsel should realistically examine the case, the evidence, and the issues, and pursue those avenues of defense that, to their best and reasonable professional judgment seem appropriate under the circumstances. [Citation.]"' (*People v. Anzalone* (2006) 141 Cal.App.4th 380, 394.)

Here, the record does not indicate why trial counsel did not file a motion to suppress the photo array. Counsel may have made a tactical choice to not file the motion. Indeed, during trial defense counsel highlighted the "suggestibility" of the photo array through his cross-examination of Detective Rand – questioning why Reneau was the only one in a white shirt in the array. In addition, during closing argument Reneau's counsel argued to the jury that the photo six pack array was unfairly suggestive of Reneau's guilt. Defense counsel's effort to apprise the jury of the suggestibility problems with the photo array may have been part of an effort to undermine the identifications in the case in support of a defense strategy to assert a mistaken identity defense.[9]

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[9] Reneau's counsel may also have recognized that the motion to suppress would not succeed. The issue in this case is identical to the issue in *People v. DeSantis* (1992) 2 Cal.4th 1198, 1209. In *DeSantis*, a witness described her aggressor as wearing a red jacket when he came to her door. In the lineup the defendant was the only person wearing red. The court reasoned that wearing a red shirt was hardly a "badge of identity" since it is common apparel and in any case the shirt did not resemble the jacket defendant wore the day of the crime. (*Ibid.*) Similarly here, Reneau was wearing a common shirt that happened to be white. In addition, the witness in *DeSantis* testified that she made her selection looking at defendant's hair and face, and not the shirt. (*DeSantis, supra,* 2 Cal.4th at p. 1209.) Similarly here, when Alvarado identified Reneau he "immediately"

As the California Supreme Court has often noted, claims such as those made by Reneau are better suited to a petition for writ of habeas corpus than to an appeal: "[N]ormally a claim of ineffective assistance of counsel is appropriately raised in a petition for writ of habeas corpus (see, e.g., *People v. Mendoza Tello* (1997) 15 Cal.4th 264, [266-267]), where relevant facts and circumstances not reflected in the record on appeal, such as counsel's reasons for pursuing or not pursuing a particular trial strategy, can be brought to light to inform the two-pronged inquiry of whether counsel's 'representation fell below an objective standard of reasonableness,' and whether 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' [Citation.]" (*People v. Snow* (2003) 30 Cal.4th 43, 111; see, e.g., *In re Cordero* (1988) 46 Cal.3d 161, 249 [habeas corpus proceeding exploring whether defense counsel failed to conduct reasonable factual investigation of defendant's potential defense of intoxication]; *In re Avena* (1996) 12 Cal.4th 694 [habeas corpus proceeding exploring whether defense counsel should have investigated and presented defense based on defendant's drug intoxication during crimes and whether he should have challenged admission of taped confession].) The Supreme Court made clear in *People v. Mendoza Tello, supra*, 15 Cal.4th 264 that an appellate court should not "set aside a jury verdict, and brand a defense attorney incompetent unless it can be truly confident all the relevant facts have been developed. . . ." (*Id.* at p. 267.) Here, we cannot say, as a matter of law, based on the record before us on appeal that counsel displayed incompetence.

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pointed to his picture and told officers it was him because he "recognize[d] his face." When asked again, Alvarado asserted that nothing else stood out to him about the picture, "no . . . just his face." Based on *DeSantis*, the trial court could have denied a motion to suppress the photo array in this case.

III. The Court Did Not Abuse Its Discretion When It Denied Reneau's Motion For A New Trial.

Reneau contends the court should have granted him a new trial because the court had improperly limited closing arguments. Reneau's counsel wanted to refer[10] to several Los Angeles Times articles during closing argument, and the court refused to allow Reneau's counsel to mention them. Reneau also argues that he was entitled to a new trial because the trial court erred in precluding him from presenting evidence of an LAPD weblog (a "blog") which referenced the crime in this case. As we shall explain, the court did not abuse its discretion in denying the motion for a new trial. (*People v. Williams* (1988) 45 Cal.3d 1268, 1318 [the determination of whether to grant a motion for a new trial is within the trial court's discretion].)

Turning first to the claim regarding the newspaper articles, the two Los Angeles Times articles Reneau sought to mention described convictions that had been overturned because of witness misidentifications. A criminal defendant has a constitutional right to have representation during closing argument; however, that right is not unbounded and limits to time and scope have been held to be within the court's discretion. (*Herring v. New York* (1975) 422 U.S. 853, 862, *People v. Rodrigues (1994)* 8 Cal.4th 1060, 1183, *People v. Boyette* (2002) 29 Cal.4th 381, 431.)

People v. Gonzales (2011) 51 Cal.4th 894 is instructive on this issue. In *Gonzales*, defense counsel indicated that he intended to talk about other capital cases. The court expressed its concern over "litigating other cases" in the argument. (*Id.* at pp. 953-956.) The defense counsel further explained that he wanted to comment on two or three cases such as the murder of Martin Luther King, Jr., the murders of children by Wayne

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[10] Reneau did not seek to have the articles admitted into evidence during the trial. Instead, he intended to use them during his closing argument as a common knowledge illustration of the issue of mistaken identity and its role in wrongful convictions. (See *People v. Love* (1961) 56 Cal.2d 720, 730 [during summation counsel may argue matters not in evidence that are common knowledge, or are illustrations drawn from experience, history or literature], overruled on other grounds by *People v. Morse* (1964) 60 Cal.2d 631.)

Williams in Atlanta, and the Terry Nichols' prosecution for the Oklahoma City bombing. (*Ibid*.) The court of appeal found the trial court properly precluded the defense from discussing the other cases during closing argument and that such argument posed a potential distraction for the jury. (*Ibid*.)

There is little difference between those proposed closing arguments counsel wanted to make in *Gonzales* and the contention made in this appeal. The similarity to the articles discussed in *Gonzales* is patent. Here defense counsel would have had to discuss the circumstances of the convictions described in the articles, which would have taken time and likely confused the jury as to the issues. Any points the defense wanted to make about eyewitnesses could have properly been admitted through the expert witness whose testimony focused heavily on the poor accuracy of eyewitness identification. In addition, counsel was allowed to argue as to the inaccuracy of the identification in this case and in general based on the evidence admitted. As a result we discern no error in the court's decision in denying Reneau a new trial based on this contention.

With respect to the evidence of the police weblog, Reneau during the trial sought to introduce an LAPD weblog from the police department website and specifically sought testimony from the weblog's custodian to introduce a posting on the weblog about the crime. The posting described the shooting at the 76 Gas Station, disclosing that an armed individual had escaped that night and an unarmed suspect had been caught at the scene. After the prosecution objected on grounds of relevance, the trial court held a hearing under Evidence Code section 402. At the hearing the blog custodian told the court that his staff had posted the particular information and that he had no other involvement or personal knowledge of the situation. The court denied admission of testimony from the blog custodian or evidence of the weblog posting.

We find no error by the trial court in refusing to admit this evidence. The statement in the blog about the crime was hearsay and was not shown to fall within a hearsay exception. Although Reneau attempted to have it admitted under the business

records exception in Evidence Code section 1271[11] or the public records exception in Evidence Code section 1280,[12] he failed to show that it met the statutory requirements of these exceptions. Indeed, the custodian of the blog testified that he had no personal knowledge of the offenses described in the posting. He was not charged with investigating the crimes and his job was ministerial, he simply posted the material provided to him by others. In addition, Reneau did not demonstrate that the blog posting at issue was based on the personal observations of the custodian of the blog or any identified person who had a duty to observe facts and record them correctly. The trial court did not err in excluding this evidence.

In view of the foregoing, the trial court did not abuse its discretion in denying the motion for a new trial.

DISPOSITION

The judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J. **SEGAL, J.**[*]

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[11] Evidence Code section 1271 provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

[12] Evidence Code section 1280 provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies: [¶] (a) The writing was made by and within the scope of duty of a public employee. [¶] (b) The writing was made at or near the time of the act, condition, or event. [¶] (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.